



**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
MEMPHIS ENVIRONMENTAL FIELD OFFICE
8383 WOLF LAKE DRIVE
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September 26, 2012

Mr. Tim Drake
Norfolk Southern Railway Company
1200 Peachtree Street NE, 7-142
Atlanta, GA 30309

CERTIFIED MAIL: 91 7108 2133 3932 2045 1930
RETURN RECEIPT REQUESTED

Mr. William Adair
WCA Land/William Adair
#50 Highway 196 South
Piperton, TN 38017

CERTIFIED MAIL: 91 7108 2133 3932 2022 1923
RETURN RECEIPT REQUESTED

RE: Memphis Regional Intermodal Facility
NPDES tracking number: TN0081108
Aquatic Resource Alteration Permit #NRS10.013
Rossville, Fayette County

Dear Mr. Drake and Mr. Adair:

Personnel from the Division of Water Resources-Water Pollution Control (Division), Memphis Environmental Field Office (MEFO) conducted an inspection of the above-referenced site on August 30, 2012. The Division appreciates Ms. Robin Hagerty providing accompaniment during the inspection. The purpose of the inspection was to determine compliance with the Water Quality Control Act of 1977 (WQCA), Aquatic Resource Alteration Permit (ARAP) #NRS10.013, and National Pollutant Discharge Elimination System (NPDES) permit TN0081108. A copy of the compliance inspection reports and photographs are enclosed for your reference.

While site conditions have improved since the previous inspections, and several items listed in the document titled Corrective Actions for Memphis Regional Intermodal Facility (TN0081108) to be completed by May 31, 2012, which was attached to the Division's letter dated May 3, 2012, have been addressed, the intent of this letter is to express continued concerns regarding site conditions.

The August 30, 2012, inspection evidenced that certain areas of the site have achieved what appears to be sufficient stabilization/vegetative cover and/or permanent perennial coverage. However, many areas of the site continue to exhibit insufficient stabilization/vegetative cover and/or lack permanent perennial coverage. The enclosed inspection report and photographs detail examples of specific

areas that lack sufficient stabilization/vegetative cover and/or lack permanent perennial coverage. Due to lack of sufficient stabilization/vegetative cover and/or lack of permanent perennial coverage, many areas of the site exhibit and/or continue to exhibit rill and gully formation. The permit requires the prevention of rill and gully formation. Number 7 on the Corrective Actions list required all slopes that exhibit rills and gullies to be re-graded as preparation for repair of the erosional features. A letter from Mr. Mark Dewberry, with Norfolk Southern, dated June 1, 2012, received by the Division-MEFO on June 4, 2012, indicated that site conditions, including the advancement into the growing season and placement of soil cement, crushed stone, sub-ballast and/or vegetation, had changed site conditions since our March 2012 inspection, and therefore precluded the need to re-grade certain areas. However, observations during the August 2012 inspection revealed the continued need to re-grade certain areas to adequately prepare the area in order to accomplish sufficient stabilization/vegetative cover and/or permanent perennial coverage. The letter dated June 1, 2012, also indicated that Norfolk Southern would ensure adequate vegetative growth for final stabilization before terminating the project's construction permit. While ensuring adequate vegetative growth may be a requirement for termination of permit coverage, please understand that waiting until final completion of the site to ensure sufficient stabilization/vegetation on areas of the site that are at final grade is not an acceptable way to achieve current compliance with the terms and conditions of the permit.

The letter dated June 1, 2012, also indicates that much of the area for outfalls SW9, SW12, SW30, SW31 and SW37 have been permanently stabilized with soil cement, crushed stone, sub-ballast and/or vegetation. While the Division agrees additional stability has been achieved for portions of the site that drain to these outfalls subsequent to previous inspections, there are portions of the site that drain to these outfalls that still lack sufficient stabilization/vegetative cover and/or permanent perennial coverage. For example, although a portion of the drainage area that contributes to SW9 is permanently stabilized, Sediment Basin 1 and the areas that discharge into Sediment Basin 1 via Pipe #10, Pipe #12 and Pipe #13 were not sufficiently stabilized, as noted on the August 2012 inspection report. Rills and gullies were also observed in these areas. The southern draining eastern drainage ditch that conveys drainage to SW12 is another example of an area that lacks sufficient stabilization/vegetative cover and/or permanent perennial coverage, evidenced by rills and gullies, and a massive slope failure. These examples, as well as other conditions, as noted in the August 2012 inspection report, indicate that permanent stabilization has not been accomplished as required.

Number 8 on the Corrective Actions list required the installation and maintenance of erosion prevention and sediment control measures to ensure the prevention of rills and gullies. As stated above, and as shown in the August 2012 inspection report and photographs, rills and gullies continued to be exhibited across the site, some of which have been observed on-site during previous inspections. Examples include, but are not limited to, the northern draining eastern drainage ditch within Sediment Basin 1, and on the slopes of Sediment Basin 3. Therefore, the installation and maintenance of erosion prevention and sediment control measures to ensure the prevention of rills and gullies has not been accomplished as required.

Number 9 on the Corrective Actions list required the installation of sod on slopes and swales or parts of slopes and swales that have been at grade for at least 15 days, in order to achieve well-established permanent perennial vegetative cover sufficient to prevent erosion. The letter dated June 1, 2012, indicated that because the Tennessee Erosion Prevention and Sediment Control Handbook only describes the use of sod for grass swales, waterways with intermittent flow and area drop inlets, and because the site doesn't contain these types of areas, the use of other measures such as Flexterra would be used instead. The Handbook in effect through August 2012 does promote the use of sod on

slopes steeper than 3:1, and does not suggest that sod would be inappropriate on slopes of lesser degrees. The new version of the Handbook (effective August 2012) also promotes the use of sod on slopes. The letter dated June 1, 2012, indicates the planned use of sod along the transition zone of the sub-ballast and soil in select areas above SW9 and SW 28. The letter also indicates a plan was to be developed for future sod installation based on the efficacy of the sod installation mentioned above. The letter goes on to state that Norfolk Southern would appreciate an opportunity to meet with TDEC regarding the development of this plan. During the August 2012 inspection, the use of sod was only observed at the top of the slope directly up-gradient from SW9 at the transition zone between the rock and the slope. However, the sod did not appear to be in an adequate amount to cover the transition zone and therefore did not appear to be achieving sufficient stability or coverage. Additionally, as of the date of this letter, the Division has not received any plan pertaining to the use of sod on-site and has never been contacted regarding an opportunity to meet to discuss the development of such a plan. While the Division remains open to the idea of using a flexible growth medium such as Flexterra, site conditions clearly indicate that permanent perennial vegetative cover has not been achieved in many areas across the site with the use of this product thus far. For example, the August 23, 2011, inspection documentation stated that the slope up-gradient from SW7 was reportedly sprayed with Flexterra 11/2 weeks prior to the August 23, 2011, inspection. However, as noted in the August 30, 2012, inspection documentation, this same area was re-graded and re-sprayed with Flexterra prior to our inspection due to insufficiently stability.

Number 10 on the Corrective Actions list required the stabilization of the banks of Sediment Basin 4. During the August 2012 inspection, the banks of Sediment Basin 4 were observed to better stabilized than observed during the March 2012 inspection. However, vegetative cover was still sparse in some areas, and rills and gullies were observed. Therefore, stabilization of the banks of Sediment Basin 4 has not been accomplished as required.

During the August 2012 inspection, Sediment Basin 8 was experiencing an uncontrolled discharge, releasing water into the northern end of the northern draining eastern drainage ditch and eventually into Stream 5. It was apparent that the water in Sediment Basin 8 had been chemically treated recently, and the basin was not releasing sediment-laden water. However, the uncontrolled discharge should be investigated and repaired to prevent discharges from occurring prior to chemical treatment, which would result in sediment-laden water entering Stream 5.

The enclosed ARAP compliance inspection form and photographs detail additional areas that need further attention, which include the stabilization of the left descending bank of Stream 5 associated with SW25, the stabilization of the banks of Stream 6 associated with the Loop Track bridge and an area below SW37 adjacent to Stream 4.

Lastly, upon review, the August 2012 DMRs results indicate that sediment and sediment-laden water has discharged off-site and into waters of the State.

Required Actions:

- Immediately install and maintain appropriate erosion prevention and sediment controls so that sediment is contained on-site to the maximum extent practicable.
- Immediately stabilize with vegetative measures all portions of the site that have remained inactive for more than 15 days.

- Immediately install and maintain appropriate erosion prevention and sediment controls to prevent the formation of rills and gullies.
- Immediately remove sediment from any sediment control measure if the design capacity has been reduced by 50% or more.
- Immediately stabilize the areas listed on the ARAP compliance inspection form.
- On or before October 19, 2012, submit twice weekly Erosion Prevention and Sediment Control (EPSC) inspection report and associated photographs for the months of May, June, July, August and September 2012 per Part IV.D.8.b.vvi of the permit.
- On or before October 19, 2012, submit a written response regarding what actions have been taken or will be taken on-site to comply with the required actions listed above. Please include in your response any additional measures that will be installed to prevent future sediment discharges to waters of the state.

Failure to perform the Required Actions may result in enforcement action under the WQCA, including but not limited to civil penalties under T.C.A. § 69-3-115. The Division reserves all rights with respect to enforcement actions, regardless of the extent of compliance with the Required Actions.

Your prompt attention and cooperation in this matter is appreciated. If any of the above deadlines cannot be met, please submit a written request to MEFO for an extension prior to the expiration of the deadline. If you have any questions, please contact Joellyn Brazile at (901) 371-3025 or Joellyn.Brazile@tn.gov (regarding NPDES aspects of the site), or Lew Hoffman at (901) 371-3019 or Lew.Hoffman@tn.gov (regarding ARAP aspects of the site).

Sincerely,



Terry R. Templeton, LPG
Manager
Division of Water Resources
Memphis Environmental Field Office

Enclosures: 8/30/12 Compliance Inspection Report and Photographs for TN0081108 and NRS10.013

cc: TDEC/DWR/MEFO: file
TDEC/DWR/NCO - Permit Section: file

cc: Mr. Patrick Parker, TDEC – Office of General Counsel
Mr. James P. Cromer, TDEC/DWR/NCO – Enforcement and Compliance
Mr. Phillip Hilliard, Tennessee Attorney General's Office, Environmental Division
Mr. Tony Caruso, Norfolk Southern Railway Company
Ms. Robin Hagerty, AMEC